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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF DENTISTRY

In the Matter of

**JOSEPH S. HANNAH, D.M.D.**  
**License No. DI 14683**

Licensed to Practice Dentistry In the  
State of New Jersey

Administrative Action

REINSTATEMENT ORDER

THIS MATTER was opened to the New Jersey State Board of Dentistry (hereinafter the "Board"), upon a petition by Giordano, Halleran & Ciesla, P.C. (Edward C. Bertucio, Jr., Esq., appearing) on behalf of respondent Joseph S. Hannah, D.M.D. (hereinafter the "respondent"), requesting that respondent's license to practice dentistry in the State of New Jersey be reinstated pursuant to the terms of the Board's June 19, 1996 Consent Order, a copy of which is attached hereto and made a part hereof.<sup>1</sup> The Board's Consent Order followed the filing of a complaint and an application for temporary suspension against Dr. Hannah by the Attorney General. The complaint alleged that between September 20, 1995 and February 15, 1996, Dr. Hannah, during the course of purported diagnostic examinations, intentionally touched the breasts of nine (9) female patients without dental or medical necessity.<sup>2</sup> The application for reinstatement was supported by reports of evaluation from respondent's treating psychologist, Howard D. Silverman, Ph.D., dated February 20, 1997, May 16, 1997, and June 4, 1997, setting forth a summary of respondent's

<sup>1</sup>Pursuant to the Board's June 19, 1996, Consent Order, Dr. Hannah's license to practice dentistry was suspended for a period of five years, the first nine months of which constitute a period of active suspension and the remainder represents a probationary period of suspension.

<sup>2</sup>Of the nine patients referred to in the complaint, five were minors between the ages of 14 to 17.

progress in therapy and attesting to the rehabilitation of respondent.<sup>3</sup> Additionally, the Board received a report based on a reevaluation of respondent conducted on April 2, 1997, by Frank J. Dyer, Ph.D., requested by the Board in connection with the respondent's petition for reinstatement. Also submitted was the Transcript of Plea entered into by respondent on April 28, 1997, before the Honorable Edward J. Turnbach, J.S.C., to one third degree offense of endangering a minor and three fourth degree offenses of sexual contact.<sup>4</sup> By the terms of the June 19, 1996, Consent Order, respondent was granted leave to seek reinstatement to active status at the completion of the nine months of active suspension provided he appeared before the Board to demonstrate his compliance with the terms of the Order and his ability to safely practice dentistry. In response to Dr. Hannah's petition, the Attorney General submitted a motion for an order denying respondent's request for reinstatement of licensure based upon the contention that Dr. Hannah had not fully complied with the terms of the order by successfully completing psychological treatment. The Attorney General's motion was supported by references to the reports of Dr. Hannah's treating psychologist, Dr.

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<sup>3</sup>In accordance with Paragraph 2 of the June 19, 1996 Order, respondent submitted to a psychological evaluation by the Board's expert, Frank J. Dyer, Ph.D., on August 22, 1996, and thereafter followed the course of treatment recommended by Dr. Dyer by engaging in individual psychotherapy with Howard Silverman, Ph.D., who is a therapist specializing in the treatment of deviant sexual behavior.

<sup>4</sup>Pursuant to the plea agreement, respondent was sentenced on June 30, 1997 to four years probation on each count to be served concurrently with the condition that respondent continue with his present course of counseling including the submission of periodic reports by his counselor to the Probation Department. Respondent was ordered to pay a total of \$4,620.00 in restitution to two patients as well as a total in the amount of \$600.00 in fees and fines in connection with the Judgment of Conviction. Respondent was also required to register as a sex offender with the Probation Department and to participate in any counseling programs and/or testing as recommended by the Probation Department. Five counts of the indictment were dismissed.

Silverman, and the State's expert Dr. Dyer.<sup>5</sup> In reply to the Attorney General's motion, respondent's attorney provided the Board with additional documents evidencing respondent's compliance with the Board's order.<sup>6</sup>

On August 6, 1997, Dr. Hannah appeared with counsel, Edward J. Bertucio, Jr., Esq., before the Board. The State was represented by Deputy Attorney General Douglas J. Harper.<sup>7</sup>

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<sup>5</sup>The Appendix attached to the Attorney General's motion included the following:

- June 19, 1996 Consent Order
- Transcript of Plea dated April 28, 1997
- Judgment of Conviction
- Report of F. Dyer, Ph.D., dated September 7, 1996
- Report of H. Silverman, Ph.D., dated February 17, 1996
- Report of F. Dyer, Ph.D., dated April 23, 1997
- Report of H. Silverman, Ph.D., dated May 16, 1997
- Letter from Dr. Silverman to Mr. Bertucio dated June 4, 1996

<sup>6</sup>Exhibits A through D attached to respondent's reply included the following:

- "A" Affidavit of Dr. Hannah attesting to compliance with the Board's Directives attached to the June 19, 1996 Consent Order.
- "B" Letter of June 30, 1996 from Warden Theodore J. Hutler, Jr., approving respondent's request to perform his 250 community service house at the Ocean County Correctional Institute.
- "C" A series of documents demonstrating Dr. Hannah's compliance with the payment of all costs incurred by the State as of the date of the hearing.
- "D" Letter from DAG Kathy Rohr to Dr. Dyer dated June 28, 1996, requesting a comprehensive psychological evaluation of Dr. Hannah following suspension of Dr. Hannah's license effective June 19, 1996.

<sup>7</sup>Prior to the August 6, 1997 Board meeting, the Board sought an articulation from the parties as to what "special" procedures should be followed in order to implement the footnote to ¶2 of the Board's June 19, 1996 Order. Specifically, the footnote provides that:

The mental health evaluation and course of treatment record shall be disclosed only to the Board and to counsel for the parties in this matter. The Board and the parties shall not disclose such materials to any other party, including the prosecutor in this matter, absent a court order which shall not be opposed by the Board.

(continued...)

Initially, the Board received into evidence and reviewed a series of documents introduced by the parties without objection. Respondent's attorney formally introduced the documents demonstrating respondent's compliance with the Board's Order which had been appended to his earlier submission. Complainant introduced psychological reports authored by Dr. Hannah's treating psychologist Dr. Silverman and by the State's expert Dr. Dyer evaluating Dr. Hannah's progress in therapy and assessing Dr. Hannah's ability to return to the practice of dentistry in New Jersey without further harm to his patients.<sup>8</sup>

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<sup>7</sup>(...continued)

Based on the footnote, respondent requested, by way of responsive papers and preliminarily at the hearing, that the entirety of the matter be held in executive session and that there be no public disclosure of the mental health evaluations. Both by way of advance submission and in argument, DAG Harper advised the Board that if the Board determined that the testimony and/or the psychological reports constituted an unwarranted violation of respondent's privacy, the Attorney General would not object to conducting that portion of the hearing in executive session. However, DAG Harper noted that the testimony regarding monitoring implicated no privacy issues and, therefore, could and should be held in public session. In an effort to balance the requirements of the Administrative Procedure Act with a fair implementation of the footnote, the full Board voted to hear the testimony of Dr. Silverman, Dr. Dyer and Dr. Hannah as it related to an evaluation of respondent's mental health in executive session so as to afford the parties free and open discussion regarding respondent's psychological evaluations and treatment of a matter falling within the footnote to ¶2 of the Board's Order.

<sup>8</sup>The following documents were entered into evidence by the State at the time of the hearing:

- S-1 Appendix attached to the Attorney General's motion in opposition to respondent's request for reinstatement.
- S-2 Curriculum Vitae of F. Dyer, Ph.D.

Respondent entered the following documents into evidence:

- R-1 Exhibits A through D attached to Mr. Bertucio's reply to the Attorney General's motion in opposition to respondent's request for reinstatement.
- R-2 Curriculum Vitae of Howard D. Silverman, Ph.D.

Again, in an effort to fully implement the confidentiality provision embodied in our earlier Order, documents admitted into evidence will not be publicly disclosed if disclosing them would  
(continued...)

In addition to documentary evidence, the Board entertained testimony offered on behalf of respondent. In open public session, respondent's attorney offered the testimony of Lucille Engesser-Webber, a licensed dental hygienist who has worked for respondent for the past twelve years, and Anna Folenta, D.D.S., a licensed New Jersey dentist, whom Mr. Bertucio proffered as potential monitors/supervisor, if Dr. Hannah were permitted to return to practice. Ms. Engesser-Webber understood that as a monitor she must be physically present at all times in the examination room when Dr. Hannah is treating patients. Dr. Folenta understood that her role as a supervisor requires that she be in the office, but not necessarily in the examining room, at all times with Dr. Hannah to supervise respondent and to safeguard against any improper behavior on the part of respondent.<sup>9</sup> When questioned on cross-examination, both women testified to a clear understanding that any failure on their part to properly supervise respondent could result in disciplinary actions against each of their respective licenses. Mr. Bertucio also provided the Board with the names of Diana Connelly, a registered dental hygienist, and Patricia Salmon, a dental assistant, to act as monitors should respondent be reinstated.

A motion was made and seconded to move into executive session for the limited purpose of hearing testimony from Dr. Howard Silverman, Dr. Frank Dyer, and respondent Dr. Hannah relative to respondent's mental health evaluations and treatment.

In closed session, respondent offered the testimony of Howard D. Silverman, Ph.D., respondent's treating psychologist, who was qualified as an expert in cases involving sex

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<sup>8</sup> (...continued)  
compromise the protection previously afforded the respondent.

<sup>9</sup>A concern was raised about after hour emergencies. The parties stipulated that all emergencies resulting after regular business hours would be handled by Dr. Folenta.

abuse offenders and victims of sexual abuse. Dr. Silverman testified extensively as to the nature and frequency of his treatment of Dr. Hannah from October 22, 1996 to the present time.<sup>10</sup> When questioned as to the cause of Dr. Hannah's past behavior, Dr. Silverman pointed to certain "stressors" present in Dr. Hannah's personal and professional life at that time. Dr. Silverman stated that he believes that Dr. Hannah has resolved most of the stressors and, therefore, Dr. Hannah is now able to function safely as a dentist. Dr. Silverman further testified that in his opinion Dr. Hannah has made significant progress in therapy resulting in "breakthroughs" that would safely permit Dr. Hannah to return to the practice of dentistry with appropriate safeguards. Although Dr. Silverman conceded that he was unaware of the fact that five of the nine patients in the original complaint were under the age of eighteen, Dr. Silverman testified that, if the Board's safeguards included a restriction barring respondent from treating minor patients, he would affirmatively recommend reinstating Dr. Hannah with such safeguards.

Dr. Hannah testified on his own behalf and expressed remorse for "everything that has transpired." Dr. Hannah stated that he understands that it is inappropriate for him to touch a patient beyond the head and neck during the course of dental treatment. Respondent told the Board that he was very embarrassed by his actions and is willing to abide by the Board's terms and conditions in order to return to work so that he can begin to put his life back together again.

The Attorney General presented Dr. Dyer, who was qualified as an expert in psychology. Dr. Dyer examined respondent on behalf of the Board on at least two separate

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<sup>10</sup>The testimony of Dr. Silverman, as well as Dr. Dyer, shall remain closed. The Board, through this order, will discuss testimony insofar as it may be necessary to understand the Board's decision. Should appellate review of this decision follow, the complete transcription will, of course, be made available to the Court.

occasions. Dr. Dyer had opined earlier in his April 23, 1997 letter of reevaluation that, if the Board decided to permit Dr. Hannah to return to practice, certain safeguards were needed to be put into place in order to protect the public. However, after listening to the testimony of Dr. Silverman and respondent, Dr. Dyer testified that he also would "affirmatively recommend" that Dr. Hannah be permitted to return to the practice of dentistry with safeguards that included: (1) no treatment of patients under the age of eighteen; (2) the presence of a dental assistant in the room or immediate treatment area to observe Dr. Hannah's actions at all times; (3) the supervision of another licensed dentist fully familiar with the details of his prior conduct and fully apprised of all restrictions placed on Dr. Hannah's reinstatement to practice, who has agreed to provide the Board with quarterly reports regarding Dr. Hannah's behavior towards his patients; and (4) Dr. Hannah's continuation in therapy with Dr. Silverman on a weekly basis and the submission of quarterly reports by Dr. Silverman to the Board that report on respondent's progress in therapy.

In closing, Mr. Bertucio noted that this experience has "shocked [his client] to the core." Counsel asked the Board to take into consideration the fact that Dr. Hannah has gained insight through therapy in order to deal with his problems. As to the possibility of recurrence, Mr. Bertucio pointed out that Dr. Dyer, in his testimony, found the risk to be negligible. He urged the Board to follow Judge Turnbach's lead in implementing a decision which will restore and rehabilitate someone who can again be a value to society.

In light of the testimony elicited from the State's own expert Dr. Dyer, Deputy Attorney General Douglas Harper, in his closing remarks, asked the Board to carefully set forth

stringent safeguards, including the restriction that Dr. Hannah not be permitted to treat minors, and withdrew his motion objecting to the reinstatement of Dr. Hannah.

The Board conducted its deliberations in executive session outside the presence of all parties on August 6, 1997. The Board has thoroughly considered the record before it and finds that the testimony presented uniformly suggests that respondent has taken necessary therapeutic steps to recognize and address his actions so as to assure that similar conduct does not recur. Evidence supportive of Dr. Hannah's efforts includes not only the opinions of Drs. Silverman and Dyer that were presented at the hearing, but also his admissions regarding his conduct found in the April 28, 1997 Transcript of Plea received into evidence at S-1.<sup>11</sup>

The record before the Board suggests that Dr. Hannah has made treatment breakthroughs. Dr. Silverman's reports and testimony suggest that Dr. Hannah has acquired sensitivity towards his patients and a commitment to safeguard against a recurrence of misconduct in the future. The expert witnesses presented were unanimous in their recommendation that Dr. Hannah can safely return to the practice of dentistry, provided that appropriate safeguards and monitoring are placed upon his practice.<sup>12</sup> Therefore, based on the foregoing, the Board finds no substantial likelihood of patients being harmed by respondent in light of the comprehensive restrictions recommended by both experts and that respondent has fully complied with all other terms of the Board's June 16, 1996 Consent Order as a condition of reinstatement. Consequently, and for the foregoing reasons,

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<sup>11</sup>The Board also noted in its deliberation the State's withdrawal of his objection to the respondents's request for reinstatement.

<sup>12</sup>The Board also took into account the fact that both experts found that the risk of reinstating Dr. Hannah would be negligible provided his restrictions included a prohibition of the treatment of minors (patients under the age of eighteen).



IT IS on this 20<sup>th</sup> day of August, 1997,

ORDERED, that:

1. Respondent's license to practice dentistry in the State of New Jersey shall be reinstated only at such time as the Board reviews and approves a plan for the resumption of practice, subject to the further conditions set forth below.
2. Respondent shall not render any dental care whatsoever to any patient under the age of eighteen, under any circumstances.
3. Respondent shall not render any dental care whatsoever to any patient outside of the regular business hour schedule provided to the Board.
4. Upon reinstatement of licensure, respondent shall at his own expense employ the services of a monitor approved in advance by the Board. Said monitor shall be a registered dental assistant or registered dental hygienist whose registration is issued by the Board. Said monitor shall be provided with a copy of the Board's June 19, 1996 Consent Order and this Order of Reinstatement and shall acknowledge receipt of said orders in writing, filed with the Board, that he or she attests to the fact that he or she has received and read the Board's June 19, 1996 Consent Order and the within Order of Reinstatement and fully understands the terms of said Orders. The board-approved monitor shall be present at all times and shall not perform any function other than monitoring while respondent renders diagnostic treatment or other related dental services to any female patient. Said monitoring shall include direct line of sight observation of the patient at all times. Should the board-approved monitor find that respondent has failed to fully comply with any of the terms of this Order, said monitor shall immediately report the non-compliance to the Board.

5. Respondent shall not render any dental care to any female patients under any circumstances unless a board-approved monitor is present in the same room where the dental care is being rendered. At the conclusion of each monitored patient's visit, the board-approved monitor shall sign the patient chart with the following notation:

Observation made: \_\_\_\_\_  
(Monitor's initials and date)

6. Upon reinstatement of licensure, respondent shall at his own expense employ the services of a licensed dentist approved in advance by the Board, whose license is issued by the Board. Said supervisor shall be provided with a copy of the Board's June 19, 1996 Consent Order and this Order of Reinstatement and shall acknowledge in writing, filed with the Board, that he or she attests to the fact that he or she has received and read the Board's June 19, 1996 Consent Order and the within Order of Reinstatement and fully understands the terms of said Orders.

7. Respondent shall not render any dental care to any patients under any circumstances unless there is present at all times in the office a board-approved New Jersey licensed dentist to supervise respondent. The supervisor shall be given access to all of respondent's patient records in order to fully oversee whether or not respondent is in full compliance with the terms of the Board's Order and for the purpose of supervising respondent's care and treatment of his patients. The board-approved supervisor shall be available to cover all emergencies occurring after regular business hours. As a condition of his or her employment, said supervisor shall submit quarterly reports to the Board regarding respondent's behavior. Should the board-approved supervisor find that respondent has failed to fully comply with any

of the terms of this Order, said supervisor shall immediately report the non-compliance to the Board.

8. In the event that the monitor or supervisor observes any inappropriate behavior, or any other conduct prohibited by the within Order, said monitor or supervisor shall immediately notify the Board's Executive Director, Agnes M. Clarke, by telephone at (201) 504-6405.

9. In the event that the monitor or supervisor is, for any reason whatsoever, unavailable to accompany respondent during the performance of his dental care, respondent shall advise the patient that the treatment must be rescheduled for a time when the monitor and supervisor will be present. Respondent shall immediately notify the Board in the event that the person(s) identified as a Board-approved monitor and supervisor is no longer functioning in that capacity. Any replacement or substitution of the person(s) identified as the Board-approved monitor and supervisor shall occur only upon approval of the Board.

10. The monitoring and supervisory requirements established herein shall continue at a minimum for the entire period of probation. Respondent shall have leave to request modification or termination of these provisions no sooner than the end of the five (5) year probationary period.

11. Respondent may make an application to the Board in writing at any regularly scheduled Board meeting, on at least one week's notice to the Board and the Attorney General, which details a plan of reinstatement that includes, at a minimum, the following information:

- a) Respondent shall provide the Board with the name, address and registration status of all proposed monitors, including a full and complete summary of all

agreements entered into regarding financial arrangements and hours of employment.

b) Respondent shall provide the Board with the name, address and license status of all proposed supervisors, including a full and complete summary of all agreements entered into regarding financial arrangements and hours of employment.

c) Respondent shall provide the Board with a schedule of respondent's regular business hours.

12. Respondent shall continue in therapy with Howard D. Silverman, Ph.D., or other board-approved mental health provider, on a weekly basis during the period of probation unless there is an express modification by the Board of this time frame for therapy. Said counseling shall be at respondent's sole expense. Respondent shall cause said provider to issue quarterly reports to the Board concerning respondent's attendance and progress in therapy. Respondent shall provide Dr. Silverman with any required consent forms for the release of such information to the Board. Respondent shall cause said provider to immediately give notice to the Board should respondent fail to attend therapy without adequate cause, such as medical emergency.

13. If respondent fails to attend therapy without adequate cause, such as medical emergency, the stayed suspension shall be activated on notice to the respondent.

14. Any failure to comply with the provisions of this Consent Order shall be grounds for the Attorney General to apply for a summary hearing before the Board or a committee of this Board, as the President may designate for this purpose, on three (3) days' notice to respondent or his attorney. The proof at such hearing shall be limited to the issue of whether this Order has

been violated and any evidence in mitigation of sanction. Upon proof by a preponderance of the evidence of a material violation of this Order, the Board members hearing the matter may summarily suspend respondent's license to practice dentistry pending a review by the full Board.

15. All other terms and conditions of the Board's June 19, 1996 Consent Order that are not inconsistent with the within Order shall continue in full force and effect. .

NEW JERSEY STATE BOARD OF DENTISTRY

By: Valentine P. Bloch  
Valentine P. Bloch, D.D.S., President